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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201755.2

DATE: August 7, 1981

MATTER OF: D. J. Barclay & Company

DIGEST:

Where IFB, as amended, fails to set forth goal applicable to affirmative action plan, cancellation of IFB is proper and claim for bid preparation costs is denied.

D. J. Barclay & Company (Barclay) protested the award of a contract to M&S Quality Painting Co. (M&S) under invitation for bids (IFB) N-62467-81-B-2430 issued by the Naval Facilities Engineering Command on the ground that the M&S bid was nonresponsive because it failed to acknowledge amendment 0001 which modified the affirmative action requirements of the IFB.

In response to the protest, the agency indicated that, regardless of the responsiveness of the M&S bid, it decided to cancel the IFB because the IFB failed to set forth any goals for minorities. Barclay disagrees that there were no minority goals and, therefore, objects to the cancellation. Barclay contends that the cancellation was arbitrary and capricious and claims bid preparation costs in the circumstances.

We do not consider the claim to have merit.

The affirmative action provision in the original IFB set forth a minority goal of 20 percent to 23 percent for all trades "[f]rom 4-16-78 until 4-15-79." Since the IFB was issued in November 1980, the minority goal in the IFB was not current and in effect no goal was provided. Amendment 0001 was issued to correct this defect. The amendment stated that the pages in the original IFB pertaining to affirmative action goals are "modified" by the pages attached to the amendment. One of the attached pages provided:

[Protest Alleging Nonresponsiveness
of Bid]

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"b.2 For Minorities

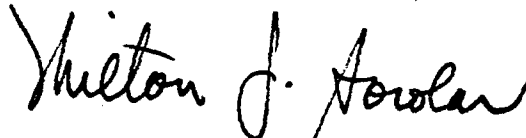
<u>Timetable</u>	<u>All Trades</u>	<u>Range of Minority Group Employment</u>
3 November 1980 Until Further Notice	All Trades	"

The agency takes the position that the amendment remained defective because, although the timetable was now made current, it failed to state any goals for minorities. The IFB was canceled for that reason.

In effect, Barclay argues that the amendment merely modified the original IFB, and that the original minority goal stated in the IFB is retained for application from November 3, 1980, until further notice. Otherwise, Barclay argues, the IFB would be contrary to regulations.

We agree with the agency. Amendment 0001 consisted of substitute IFB pages which set forth the affirmative action clause in its entirety without stating any goal for minorities. There was no reason to assume from the Amendment that the goal from the prior period was still applicable. Rather it appeared that the agency had simply neglected to include a goal for the current period. As the protester points out, a minority goal was required to be included in the IFB. For this reason the agency was justified in cancelling the IFB to remedy the defect.

The claim is denied.



Acting Comptroller General
of the United States